

**IN THE JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD
IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

**STATEMENT BY PRAVIN JAMNADAS GORDHAN
REGARDING TERMS OF REFERENCE 1.1 TO 1.3**

11 OCTOBER 2018

INDEX

I	INTRODUCTION AND SCOPE OF STATEMENT	4
	Political context to statement	5
II	MY FIRST TERM AS MINISTER OF FINANCE	13
	Introduction	13
	Appointment of SARS Commissioner	14
	The end of my first term as Minister of Finance	15
	Nuclear deal (Part I)	16
	PetroSA/Engen	21
	My appointment to COGTA	24
III	REMOVAL OF MINISTER NENE	26
	Denel Asia	26

	Wednesday, 9 December 2015	29
	Thursday, 10 December and Friday, 11 December 2015	29
	Thursday, 10 December to Sunday 13 December 2015	29
	Sunday, 13 December 2015	31
	Monday, 14 December and Tuesday, 15 December 2015	33
IV	RELEVANT EVENTS IN MY SECOND TERM AS MINISTER OF FINANCE	34
	South African Airways	34
	2016	35
	27 Questions	36
	New Age Budget Breakfast Cancellation	40
	Offer to Jonas	40
	My interactions with Gupta family members	42
	Public attacks and Presidential inaction	45
	Charges	50
	The closure of the Gupta bank accounts	51
	Nuclear deal (Part II)	54
	Maseko and DGs response	56

V	MY REMOVAL AS MINISTER OF FINANCE	58
VI	RETURN TO PARLIAMENT	64
VII	RETURN TO CABINET	65
VIII	CONCLUSION	66

I INTRODUCTION AND SCOPE OF STATEMENT

1. This statement is submitted to the Judicial Commission of Inquiry (“Commission”) in terms of Rule 6.2 of the Rules of the Commission. It is prepared at the request of the Commission’s Legal Team (as defined in Rule 1.4), following an initial meeting held on 13 August 2018 and subsequent engagements between my legal representative and the Commission’s Legal Team.
2. In order to assist the Commission in its current proceedings, this statement addresses primarily the Commission’s Terms of Reference 1.1 to 1.3. Specifically, this statement sets out the circumstances surrounding my appointment as Minister of Finance on 14 December 2015 and my removal, announced in the early hours of 31 March 2017, by former President Jacob Zuma (“former President Zuma” or “Mr Zuma”). Further events and issues that may be relevant to both the appointment and dismissal are also set out below. The details of each of these events may require further investigation by the Commission and, I believe, should be the subject of further evidence by other witnesses before the Commission.
3. This account is based on my recollection, as well as contemporaneous correspondence and media reports, and the recollections of officials, primarily in the National Treasury, which refreshed my memory of some of these events. Relevant documents referred to below will be provided together with this statement.

Political context to statement

4. I am a life-long activist and member of the African National Congress (“ANC”).
5. I believe in the principles of the Freedom Charter and in our Constitution. I am committed to contributing to the achievement of constitutional democracy and the establishment of a democratic government guided by the preamble of the Freedom Charter, that *“South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people.”*
6. The Preamble of our Constitution commits us to uplift the poor, as do the objectives of the ANC - to eliminate inequalities, promote economic development for the benefit of all and to create a society in which social justice and economic emancipation occur within a far-reaching transformation of our society.
7. This transformation is multi-dimensional: political, institutional, social, economic and cultural. But transformation and transitions also can unleash the forces of greed, corruption and new means of exploitation.
8. So participation in government as an ANC cadre is not just a technical or technocratic role, but one aimed at achieving the vision and goals of our leaders, such as Nelson Mandela, Walter Sisulu, Lillian Ngoyi, Bram Fischer and others.
9. In contrast, state capture and corruption are consequences of the unleashing of the worst human instincts – self-enrichment, neglect of the higher mission, placing one’s self-interest before the community’s interests.
10. Reflecting on the period 2009 to 2017 now, it would appear that I was witness to events, some of which are set out below, and it seems an unwitting member of an

Executive in the earlier part of this period, which was misled, lied to, manipulated and abused in order to:

- 10.1. Benefit a few families and individuals;
- 10.2. Release the worst forms of recklessness and corruption;
- 10.3. Rob ordinary people of schools, clinics, education;
- 10.4. Abuse and decimate key institutions of our democracy: including SARS, the Hawks, NPA, SOEs like Eskom, Denel, Transnet etc.; and
- 10.5. Damage the economy, increasing joblessness, forsaking the youth, and increasing the marginalisation of women.

11. State capture became a sophisticated scheme or racket that:

- 11.1. Advanced false narratives, including racist pejoratives;
- 11.2. Used external agencies, like Bell Pottinger, and the services of professional advisors, including management consulting firms, auditors and lawyers, to entrench itself;
- 11.3. Marginalized and dismissed honest public servants and replaced them with compromised or incompetent individuals; and
- 11.4. Allowed a climate of impunity in respect of crime and corruption.

12. The ANC at its most recent elective conference in December 2017 noted and resolved as follows:

“ANC CREDIBILITY AND INTEGRITY: DEALING WITH CORRUPTION

Noting

An increase in corruption, factionalism, dishonesty, and other negative practices that seriously threaten the goals and support of the ANC.

That these practices contradict and damage our mission to serve the people and use the country's resources to achieve development and transformation.

That corruption robs our people of billions that could be used for their benefit.

That the lack of integrity perceived by the public, has seriously damaged the ANC image, the people's trust in the ANC, our ability to occupy the moral high ground, and our position as leader of society.

That current leadership structures seem helpless to arrest these practices, either because they lack the means or the will, or are themselves held hostage by them.

At times we do things that are not according to ANC or government policy, or not legal or constitutional, and wait for courts to correct our actions.

Our association with, and the closeness of our leaders to, business people facing allegations of corruption.

That the ANC is endangered to the point of losing credibility in society and power in government.

That our leadership election processes are becoming corrupted by vote buying and gatekeeping

That the state investigative and prosecutorial authorities appear to be weakened and affected by factional battles, and unable to perform their functions effectively

RESOLVES

That the 2015 NGC resolutions plus other existing and new measures are implemented urgently by the NEC and PECs to:

1. Strengthen our understanding of our values, ethics and morality and the demands that the people, the constitution and the rule of laws place on us as the guardians of the state, and its resources

2. Demand that every cadre accused of, or reported to be involved in, corrupt practices accounts to the Integrity Committee immediately or faces DC processes. (Powers of IC under constitutional changes)

- 3. Summarily suspend people who fail to give an acceptable explanation or to voluntarily step down, while they face disciplinary, investigative or prosecutorial procedures.*
- 4. We publicly disassociate ourselves from anyone, whether business donor, supporter or member, accused of corruption or reported to be involved in corruption*
- 5. All ANC members and structures should cooperate with the law-enforcement agencies to criminally prosecute anyone guilty of corruption*
- 6. The ANC should respect the Constitution of the country and the rule of law and ensure that we get the best possible legal advice in government to ensure our compliance wherever possible, rather than waiting to defend those who stray.*
- 7. The ANC deploys to Cabinet, especially Finance, Police and Justice, should strengthen the state capacity to successfully investigate and prosecute corruption and account for any failure to do so*
- 8. Secretaries at all levels will be held accountable for any failure to take action or refer matters of corruption or other negative conduct (in terms of ANC code of conduct) to the relevant structures.*
- 9. Within the ANC nomination and election process: Ban all slates and enforce the ANC code of conduct and disciplinary procedures. Investigate and prosecute all cases of vote or support buying, or membership or branch gatekeeping.*
- 10. Implement the NEC resolution on state capture, including the expeditious establishment of a Judicial Commission of Enquiry.”*

13. Congruent with these resolutions, and with the dictates of my conscience, I provide this statement to the Commission in the hope that it assists the Commission in its important work to uncover the truth of state capture, and to ensure that it can never occur again.

14. I must emphasise that my knowledge and my understanding of state capture – like that of the rest of the country - evolved over time. What I know now to have been significant events did not appear to be so at the time. The significance and the

inter-relationship of such events were revealed progressively and often only in hindsight. Repeated changes to Cabinet, to the Boards of State-Owned Companies, and in the leadership of key institutions and organs of state, often without rational explanation, were done to take control of such institutions. This would be followed by the plunder of resources within those institutions, without the risk of prosecution.

15. It is in this context that the events I recount, between 2009 and 2017, should be viewed. Further, I hope to assist the Commission in some way by “connecting the dots” represented by:

- 15.1. Executive appointments and dismissals;
- 15.2. Persecution and campaigns of harassment and intimidation;
- 15.3. Major public procurement projects; and
- 15.4. Commandeering and neutralising key state law enforcement agencies.

16. A useful conceptual framework for understanding events and the phenomenon of state capture has been developed by the group of academics who published the *Betrayal of Promise* report and the recent book, *Shadow State: The politics of state capture*. It envisages various groupings that perform different roles in state capture and patronage networks. Briefly, as explained by these academics (see p 57 of the *Betrayal of Promise* report), it comprises of:

- 16.1. Controllers – strongmen who secure access to and maintain control over resources. They are the “patrons of resources (e.g. Zuma and the Guptas), sit at the apex and are . . . directly responsible for predation and exploitation”;

- 16.2. Elites – who are in networks that can attract resources with controllers, and who establish and maintain patronage networks that facilitate the distribution of benefits;
- 16.3. Brokers – who have access to resources that can facilitate the trade of resources;
- 16.4. Mobility controllers – who have the ability to control the movement of and access to resources, working closely with Brokers; and
- 16.5. Dealers – who are responsible for managing and hiding financial transactions and laundering money.
17. This analytical framework is useful to keep in mind when evaluating the evidence before the Commission.
18. Similarly, the South African Council of Churches, released its *Unburdening* report in May 2017 which documents the accounts of corruption and state capture from members and whistle-blowers in their different congregations.
19. I hope that this statement will assist in exposing some elements of state capture and of the syndicates and sub-groupings that both engineered this sad period in our history, and benefitted enormously at the expense of the wellbeing of millions of poor, unemployed and underprivileged South Africans.
20. National Treasury is placed at the centre of the state by our Constitution and by the applicable legal framework that regulates the management of public finances, state procurement, revenue collection, tax administration, protection of the financial and banking system, and forensic analysis and input into decision-making

with significant financial and fiscal consequences. For this reason, I believe that the capture of National Treasury was an essential objective of state capture, along with the weakening of law enforcement and the capture of State Owned Enterprises.

21. Several key individuals within National Treasury leadership over the past decade displayed admirable determination and commitment to following the law. National Treasury was, however, placed under enormous pressure and was targeted in a vicious, personalised and relentless campaign that played out in the courts, the criminal justice system, through illegitimate intelligence reports, on social media and in some of the media.

22. The resolve and professionalism displayed by National Treasury officials during a difficult period is to be commended. Their commitment to follow the Constitution, comply fully with the applicable legal and regulatory frameworks, implement sound and sustainable policies and pursue the national interest ensured that there was at least some resistance to the state capture project.

23. In my six and a half years as Minister of Finance, I worked with the National Treasury, other institutions and colleagues towards realising the vision of the Constitution, recognising that South Africa needs transformation that opens a path to inclusive economic growth and development. Growth without transformation would only reinforce the inequitable patterns of wealth inherited from the past. Transformation without economic growth would be narrow and unsustainable.

24. Government's objective is not merely to transfer ownership of assets or opportunities to contract with the state to a small group of connected individuals: it is to change the structure of the economy. Broad-based transformation should

promote growth, mobilise investment, create jobs and empower citizens. It must create new resources to support social change, including assets and livelihoods for the majority, and strengthen South Africa's constitutional foundations.

25. This is the vision that was attacked by state capture, including by those at the highest levels of the executive.

II MY FIRST TERM AS MINISTER OF FINANCE

Introduction

26. I was a Member of Parliament in the first democratic Parliament from 1994 to 1997.

I was then the Commissioner of the South African Revenue Service (“SARS”) from 1999 and I first held the position of Minister of Finance from 10 May 2009 until 25 May 2014.

27. The statement and documents already provided to the Commission by former Minister Nhlanhla Nene (“Mr Nene”) outlines the constitutional, legal and regulatory role and functions of the National Treasury.

28. In addition, there needs to be a close and functional relationship between the President and his or her Minister of Finance. It also is important that, whoever is appointed the Minister of Finance, that person must enjoy the trust of --

28.1. the public -- that their funds are safe and will be spent efficiently and effectively;

28.2. taxpayers -- who pay their taxes; and

28.3. investors (both domestic and foreign) -- that the money that they lend to the Government every year will be paid back on time in the future. The more confidence this last group has that the Government will honour all of its financial commitments, the lower the cost of funding for Government, and hence the more resources it will have to deliver services to the people of this country.

Appointment of SARS Commissioner

29. When I became Minister of Finance, a top priority that I had to deal with was the continuing after-effects of the 2008 global financial crisis. This led to South Africa experiencing a recession in 2009, even though our financial sector proved to be safe and stable. As a result, Government had to stimulate the economy by running higher deficits, amongst other measures. Importantly, this crisis also affected our revenue collection by the SARS.

30. Following my appointment as Minister of Finance on 9 May 2009, Mr Oupa Magashula (“Mr Magashula”), was appointed as the Acting SARS Commissioner on 11 May 2009 (**see Annexure 1**), while the position for a SARS Commissioner was advertised soon thereafter.

31. As Minister of Finance, I initiated the process of receiving applications from candidates for this position, shortlisting these and convening a panel with other Cabinet colleagues to interview those on the shortlist.

32. After this process, a memorandum was submitted to Cabinet recommending that the President appoints Mr Magashula as the SARS Commissioner. Mr Magashula’s appointment was announced on 30 June 2009 (**see Annexure 2**).

33. Mr Magashula resigned on or about 12 July 2013 (**see Annexure 3**). Mr Ivan Pillay was appointed as acting Commissioner from that date. The post of SARS Commissioner was advertised by the Ministry of Finance in the latter half of 2013 (**see Annexure 4**). The Ministry received more than 120 applicants.

34. I became aware that former President Zuma wished to exercise his powers to appoint the new Commissioner. I advised him that he may want to put his preferred

candidate through the usual process (i.e. the interview and Cabinet consultation process set out above). In the event, it would appear that he ignored this suggestion.

35. The issue remained unresolved by the time of the May 2014 elections, and I was appointed to a new Ministry. Mr Tom Moyane (“Moyane”) was appointed as Commissioner of SARS by former President Zuma on or about 23 September 2014 (see Annexure 5).

The end of my first term as Minister of Finance

36. Whilst it is not possible to know what was in the former President’s mind when appointing his Cabinet, I will point to a number of specific issues that were an early manifestation of the profound interest that the former President had in what should have been ordinary transactional matters subject to due diligence, affordability and feasibility studies.

37. To assist the Commission, I set out briefly events that preceded my deployment to the COGTA portfolio in May 2014 and which may also relate to the removal of Mr Nene in December 2015. The three projects identified below (nuclear procurement, PetroSA/Engen and Denel Asia) could be material to the Commission’s inquiry.

37.1. I will outline relevant events during my tenure of which I was aware. The evidence of others who were more directly involved may be required before a complete picture of each of these projects is possible.

37.2. Suffice to state that at least two of these projects share similarities with respect to their size in monetary value and the level of personal interest showed by former President Zuma in them. They may be suggestive of a pattern that may be relevant to understanding the methodologies and aims of the state capture project.

“The Nuclear Deal” (Part I)

38. The Integrated Resource Plan (IRP2010) was promulgated in 2011. It projected that 9.6GW of nuclear power generating capacity would need to be added to the national grid between 2023 and 2030.

39. On 9 November 2011, Cabinet established the National Nuclear Energy Executive Coordinating Committee (“NNEECC”) (**see Annexure 6**). The NNEECC was to provide oversight and make decisions regarding a nuclear energy policy and the new build programme, following investigations into costing, financing, technical and operational options.

40. Following the establishment of the NNEECC, it was evident that former President Zuma wished to procure the 9.6GW of nuclear power generating capacity for South Africa from Russia. Such a transaction has been estimated to cost in excess of R1 trillion, if not more. It became known as “the nuclear deal.”

41. With regard to my interactions with the former President, expressly concerning the nuclear deal during my first term as Minister of Finance –

- 41.1. I attended one meeting with former President Zuma in the latter half of 2013 at the Presidential residence in Pretoria, Mahlamba Ndlopfu, in which he made it clear that he wished the nuclear deal to proceed.
- 41.2. The former Director-General of National Treasury, Mr Lungisa Fuzile (“Mr Fuzile”) also was present at this meeting. I met him at Mahlamba Ndlopfu, following telephone calls asking us to urgently meet the former President. We were not advised by his office what the meeting was about. When we arrived, the former President was not yet there.
- 41.3. Present for that meeting was Mr Senti Thobejane, who I came to understand was a key advisor on energy matters to former President Zuma, on the proposal. He was also an advisor to then Minister of Energy, Mr Ben Martins (“Mr Martins”), and thereafter to his successor, Ms Joemat-Pettersson. It was reported in the media in mid-September 2015 that he had departed suddenly from this position (**see Annexure 7**).
- 41.4. While we waited for the former President’s arrival, Mr Fuzile and I spoke with Mr Thobejane. Mr Thobejane’s presence was the first inkling we had that the former President wished to discuss nuclear procurement with us that day. Mr Thobejane explained the technical details of the procurement of nuclear power generation capacity to Mr Fuzile and me. I asked him who the major players were in the field, and he explained that the United States, France, China, South Korea and Russia were all possible suppliers of the technology to South Africa.

- 41.5. I was struck by the fact that the then Minister of Energy (Mr Martins) and the then Director-General of the Department of Energy (Ms Nelisiwe Magubane) were not present at the meeting.
- 41.6. Eventually, the former President arrived and joined us. I explained to him that we had been talking to Mr Thobejane for some time, and that he had been explaining the nuclear technology and its possible suppliers to us. Mr Zuma indicated that South Africa needed nuclear power and that a process should be initiated to procure it.
- 41.7. I indicated to the former President that nuclear procurement was a complex issue, that there were lots of interested stakeholders, such as the various competing suppliers and environmentalists.
- 41.8. I indicated to Mr Zuma that the National Treasury could undertake an exercise to design a procurement process for such a significant project and to ensure that it complied with the applicable legal framework for public and energy procurement.
- 41.9. I made this undertaking after I indicated to the former President that it would be appropriate to follow lawful procurement procedures for such an expensive project to avoid becoming mired in scandal like the so-called “arms deal.” I wanted to impress upon the former President that undertaking the nuclear procurement required careful consideration of its costs, the choice of supplier, due process and the likely challenges to any decision to proceed.
- 41.10. Finally, I indicated that Mr Fuzile and Mr Thobejane ought to exchange telephone numbers so that the former could explain procurement processes in

line with the Constitution and the applicable legal framework to the latter. To the best of my recollection, no further engagement regarding the nuclear deal occurred with Mr Thobejane and Mr Fuzile, nor between myself and former President Zuma.

42. To complete the chronology of work done by National Treasury on the nuclear procurement issue during my first term, I am advised by officials within National Treasury that, as part of its pre-procurement process and in preparation for the envisaged nuclear new build programme, the Department of Energy furnished officials at the National Treasury with an extensive set of documents in November 2013 (**see Annexure 8**). These included a draft feasibility study report, titled *Draft Feasibility for the Nuclear Programme of the Republic of South Africa*, together with a wide range of accompanying research papers and reports dealing, *inter alia*, with international experience in nuclear procurement, costing, licensing, localization, the fuel cycle, waste disposal, environmental impacts, skills development, international agreements and conventions and the power industry structure.

43. The so-called nuclear deal first came to the attention of officials at the National Treasury at some point in 2013 when a draft cooperation agreement, to be signed with Russia, was provided because it included a tax incentive structure. The Department of Energy approached National Treasury for input on this incentive structure and to consider and assess the implications under the Public Finance Management Act ("PFMA"). Officials within National Treasury raised concerns with this draft agreement and its clear objective of creating firm fiscal commitments to Russia by South Africa.

44. Officials at National Treasury strongly objected to the Department of Energy and undertook to prepare a commentary on the feasibility study and financing studies that were eventually received from the Department of Energy during 2014 and 2015. National Treasury also undertook a preliminary review of costing scenarios and financial aspects of a nuclear build programme. These reviews were continuously discussed with the Department of Energy.

45. In June 2014, the NNEECC was converted into the Energy Security Cabinet Subcommittee (“ESCS”), and was chaired from then on by former President Zuma in the place of then Deputy President Kgalema Motlanthe. The ESCS was responsible for oversight, coordination and direction of activities for the entire energy sector (**see Annexure 9**). The ESCS comprised the following members of the executive at that time:

45.1. Minister of Energy, Ms Tina Joemat-Pettersson (“Ms Joemat-Pettersson”);

45.2. Minister of Public Enterprise, Ms Lynne Brown (“Ms Brown”);

45.3. Minister of International Relations and Cooperation, Ms Maite Nkoana-Mashabane;

45.4. Minister of State Security, Mr David Mahlobo (“Mr Mahlobo”);

45.5. Minister of Finance, Mr Nhlanhla Nene;

45.6. Minister of Trade and Industry, Dr Rob Davies;

45.7. Minister of Economic Development, Mr Ebrahim Patel;

45.8. Minister of Mineral Resource, Advocate Ngoako Ramatlhodi;

45.9. Minister of Defence and Military Veterans, Ms Nosiviwe Mapisa-Nqakula.

46. The Commission should investigate the rationale for these changes and the activities undertaken by the ESCS in advancing “the nuclear deal.”

47. Once I was appointed as the Minister for COGTA, I was, in any event, no longer privy to the details of any further developments concerning nuclear procurement, though I was aware from media reports of litigation (that was ultimately successful in April 2017) which challenged the process that was followed to commence the procurement process. I also was aware of reports of the conclusion of an intergovernmental agreement with the Russian Federation relating to cooperation in the field of nuclear energy in or about September 2014, by the then Minister of Energy (**see Annexure 10**).

48. In sum, National Treasury, during my first term as Minister of Finance, insisted on sufficient and satisfactory evaluations of the true cost and attendant fiscal risks for the country of the proposed nuclear deal.

49. Details of the so-called nuclear deal was not sufficiently advanced at that time to require firm fiscal commitments from National Treasury.

PetroSA/Engen

50. Another contemplated transaction regarding which I interacted with former President Zuma during my first term as Minister of Finance related to the possible

purchase by PetroSA of the shareholding held by Malaysian oil company Petroliam Nasional Bhd (“Petronas”) in Engen. I set out details regarding this contemplated transaction below (**see Annexure 11**).

51. Since at least 2012, I understand that the Ministry of Energy had engaged with Petronas regarding the acquisition of its stake in Engen by PetroSA. During former President Zuma’s visit to Malaysia in August 2013, I believe that the transaction was confirmed as a high strategic priority for the South African government. By the first quarter of 2014, I became aware that those negotiations, facilitated by the Department of Energy, were at an advanced stage.

52. At around mid-March 2014, the former Minister of Energy, Mr Martins, applied to National Treasury for (i) approval in terms of section 54 of the Public Finance Management Act, No 1 of 1999, for the acquisition of the Petronas shareholding by PetroSA and (ii) a government guarantee for the proposed value of the acquisition.

53. I understood from the Department of Energy that the value of the acquisition of all of Engen’s issued share capital was R18.68 billion. It became clearer as the transaction evolved that its true value was closer to between R12 and R14 billion. This raised red flags for me as to why there was a possible difference of up to R6 billion in possible valuations of the Engen stake, and who may stand to benefit from that difference. SONANGOL, Angola’s national oil company, had been selected as a strategic equity partner in the transaction, which would see it end up with 49% of Engen. The proposal was that PetroSA and SONANGOL would provide around 80% of the purchase price, with the balance funded privately. However, a

government guarantee of PetroSA's portion was required in order for the transaction to proceed.

54. With respect to former President Zuma's involvement in this proposed transaction:

54.1. I am reminded by former National Treasury officials that, on 31 March 2014, I was at the offices of SARS. Every year, on 1 April, SARS and National Treasury make a public announcement of the tax revenue collected in the preceding tax year.

54.2. While at the SARS offices, I received enquiries from former President Zuma about the status of the applications lodged by Mr Martins.

54.3. I indicated that various technical issues were being discussed by National Treasury with representatives of the Department of Energy and PetroSA. As set out below, those engagements continued into April 2014.

54.4. In response to Mr Zuma's telephone calls, a meeting was held the following day (1 April 2014) at the SARS offices with Mr Martins and myself. The meeting was relatively short in duration, and I recall explaining again the need for further information and the need to conduct a detailed due diligence on the transaction before any guarantee could be approved by National Treasury. A due diligence is a comprehensive appraisal of a business undertaken by a prospective buyer, especially to establish the value of its assets and liabilities, and in order to evaluate its future commercial potential. SONANGOL's participation in the transaction was conditional on the successful completion of a due diligence on Engen (**see Annexure 12**).

54.5. It remained curious that such a huge transaction would even be attempted without an appropriate due diligence being conducted. The reluctance and even avoidance of conducting a due diligence is suspicious in and of itself. I hope that the Commission will be able to investigate this transaction further.

55. I was informed that during late March and continuing into April 2014, technical teams at National Treasury met repeatedly with representatives of the Department of Energy and PetroSA. As a result of those engagements, National Treasury eventually provided a conditional guarantee for the transaction on 25 April 2014 of up to R9.5 billion, though the guarantee was subject to several onerous but necessary financing conditions being met, and the satisfactory completion of the necessary due diligence.

56. Ultimately, the transaction did not proceed because Petronas withdrew from the deal after PetroSA failed to fulfil the financing conditions and a due diligence was not performed. As a result, I understand that the guarantee was withdrawn by my successor, Mr Nene, on or about 9 March 2015.

My appointment to COGTA

57. In the evening of 24 May 2014, after the inauguration ceremony, I received a message to meet with former President Zuma at Mahlamba Ndlopfu, as is the tradition in making appointments to Cabinet following an election. I was informed of my appointment as Minister of Cooperative Governance and Traditional Affairs (“COGTA”) by the former President.

58. I was told by the former President that I was being deployed to the COGTA portfolio due to my familiarity with local government matters and given the preparation for the upcoming local government elections in 2016. There was speculation in political and media circles that I would be moved from the post of Finance Minister.

59. Mr Nene was appointed Minister of Finance in the same Cabinet. Prior to that, he had held the position of Deputy Minister of Finance since November 2008.

III REMOVAL OF MIN NENE

60. I turn next to the dismissal of Mr Nene, and my eventual re-appointment for a second stint as Minister of Finance. Several issues relating thereto occurred within the confines of Cabinet that should be pursued by the Commission.

Denel Asia

61. While I am unaware of the reasons why the former President removed Mr Nene on 9 December 2015, media reports subsequently revealed that on or about 30 October 2015, a pre-notification was received from Denel alerting the Director-General of the National Treasury of its intent to establish a joint venture between Denel (led by a Board, largely appointed in July 2015 by Ms Brown), and a Gupta-affiliated entity, VR Laser Asia (**see Annexure 13**).

62. VR Laser Asia is a company owned by Mr Salim Essa ("Essa"), a Gupta business associate, as its sole shareholder, and which has a relationship with VR Laser RSA, owned by Duduzane Zuma and Rajesh Gupta. The joint venture was contemplated purportedly to exploit Denel's intellectual property and proprietary information in India. The joint venture was to be known as Denel Asia.

63. This pre-notification is not a formal requirement under the framework established under the PFMA, but has been developed by the Department of Public Enterprises as a procedure to facilitate considerations of applications by SOCs to undertake major transactions in terms of section 54 of the PFMA.

64. According to media reports on the information contained in the #Guptaleaks, one day after Denel submitted its PFMA application to National Treasury on 30 October 2015, the Denel Chair, Mr Daniel Mantsha (“Mr Mantsha”), forwarded the confidential document to Mr Ashu Chawla (“Mr Chawla”), a senior Gupta executive and the Chief Executive Officer of Sahara Computers, a company owned by the Gupta family.
65. On or about 23 November 2015, Ms Brown provisionally approved the initiative and set out various issues that needed to be covered in the formal PFMA application. As the pre-notification was not a formal PFMA application, there was no requirement for National Treasury to respond, nor did National Treasury usually respond to such pre-notifications.
66. Emails contained in and reported on by the media following the #Guptaleaks, show that on 7 December 2015, Mr Chawla emailed a copy of Ms Brown’s in-principle approval, and a briefing document, directly to the personal assistant of Mr Nene.
67. Before Mr Nene was removed as Finance Minister, no formal PFMA application had been submitted seeking his approval of the establishment of Denel Asia. Therefore, Mr Nene had not approved the joint venture.
68. However, days later, Mr Nene was removed. On 10 December 2015, Mr David “Des” van Rooyen (“Mr Van Rooyen”) was appointed Minister of Finance.
69. By 11 December 2015, the formal PFMA application seeking approval for the establishment of Denel Asia was submitted, addressed to the newly installed Minister. Mr Van Rooyen did not have the opportunity to approve the joint venture prior to him being removed as Minister of Finance on 13 December 2015.

70. Legal advice obtained by the National Treasury indicated that, based on the conditions attached to the government guarantees, the explicit approval of both the Ministers of Finance and of Public Enterprises in terms of Section 54(2) of the PFMA, in addition to a decision under Section 51(1)(g) of the PFMA by the Minister of Finance, were required prior to the formal establishment of Denel Asia. This information was communicated both verbally and in writing on several occasions to Denel as well as the then Minister of Public Enterprises, Ms Brown.

71. Extraordinarily belligerent attacks were made on me personally and Treasury more broadly by Mr Mantsha, the Chairperson of the Denel Board. He demanded that I retract, in writing to the Denel Board, comments and statements I had made regarding the lawfulness and desirability of the joint venture, and apologise to the Denel board. He also wanted me to acknowledge that National Treasury had failed to discharge its duties in a diligent and responsible manner, even though the reverse was actually the case. It is unheard of for a Chairperson of an SOC to attack a Minister of Finance in public, and for the Minister of Public Enterprises responsible for that SOC to take no steps to reign in such attacks, to the best of my knowledge (**see Annexure 14**).

72. In addition, litigation was launched by Denel against the Minister of Finance and National Treasury. Specifically, an application for a declaratory order was made by Denel on 24 March 2017, in the week before I was eventually dismissed as Finance Minister (**see Annexure 15**).

73. I turn next to address the extraordinary events that occurred between 9 and 13 December 2015.

Wednesday, 9 December 2015

74. Following a Cabinet meeting held on 9 December 2015, former President Zuma announced the removal of Mr Nene as Minister of Finance, and his replacement, Mr van Rooyen, in a media statement issued at approximately 20h00 that day (**see Annexure 16**).

75. I was unable to attend the Cabinet meeting held that day. I learnt later that the so-called nuclear deal had been approved by Cabinet.

Thursday, 10 December and Friday, 11 December 2015

76. On Thursday 10 December and Friday 11 December, the announcement of Mr Nene's removal caused economic and financial market turmoil and a sharp depreciation in the value of the Rand. Once markets closed for the weekend, there were ongoing fears that the situation would worsen when they re-opened on Monday, 14 December 2015.

Thursday, 10 December to Sunday, 13 December 2015

77. Over these four days, the removal of Mr Nene and his replacement by Mr van Rooyen also resulted in a widespread public outcry. Civil society, organised labour and organised business groups criticised the decision, and demanded urgent corrective action by former President Zuma (**see Annexure 17**).

78. Over this period, I engaged with Ms Lakela Kaunda (“Ms Kaunda”), the Chief Operations Officer in the Presidency at the time, regarding my concerns, in the national interest, about the economic turmoil and its adverse impact on the country and citizens that followed the removal of Mr Nene. I suggested that a team consisting of the Presidency, the South African Reserve Bank, Treasury and the private sector meet with investors to reassure them before the markets opened for trading on Monday, 14 December 2015. My primary concern was the need for urgent measures to address the economic and financial harm caused since the announcement of Mr Nene’s removal, while at the same time remaining conscious that such matters related to Treasury and were not within the brief of COGTA.

79. The devastating impact of this unexpected announcement on the South African economy is estimated to be approximately R500 billion. As commentators and market analysts had described, over two days, the market value of the country’s 17 biggest financial and property shares fell by R290 billion. This figure excludes the remainder of the equities market that also was hard hit by the decision. South African bonds lost 12% of their capital value (R216 billion). The Rand depreciated sharply from R13.40 to R15.40/USD overnight.

80. The decision also ushered in a period of close scrutiny of institutional stability and policy certainty by global ratings agencies.

Sunday, 13 December 2015

81. In the late afternoon of Sunday, 13 December 2015, I received a message from Ms Kaunda requesting my attendance at a meeting with former President Zuma to be held at Mahlamba Ndlopfu later that evening.

82. At around the same time, Ms Jessie Duarte, the Deputy Secretary-General of the African National Congress (“ANC”), contacted me explaining that I was going to be asked to do something by former President Zuma, and that I should not refuse the request.

83. I received a similar message from the Deputy President of the ANC and the country at the time, Mr Cyril Ramaphosa.

84. I believe Ms Duarte and then Deputy President Ramaphosa had met with former President Zuma over the weekend regarding his surprise removal of Mr Nene and the appointment of Mr van Rooyen.

85. I arrived at Mahlamba Ndlopfu at approximately 18h30 that evening and met with former President Zuma.

85.1. During that conversation, former President Zuma indicated that he was of the view that Mr van Rooyen was suitable for the Finance Minister position, but others felt that the turmoil when markets re-opened on Monday could be even more serious if Mr van Rooyen was retained, than that experienced on the previous Thursday and Friday.

85.2. Former President Zuma indicated that he wanted me to take up the position in order to calm the markets.

85.3. I responded that there were other qualified individuals that the former President could consider for the post, such as Messrs Mcebisi Jonas and Jabu Moleketi.

85.4. Former President Zuma indicated that neither of these suggestions were acceptable to him, and that he thought that I should accept the position.

86. I indicated that I needed to consult with my family and called my home to discuss these developments.

87. Following that conversation, I accepted my re-appointment as Minister of Finance, although I was enjoying my role at COGTA.

88. In agreeing to serve again as Minister of Finance, I indicated to the former President that there were three matters at that time which concerned me. I indicated that these must be discussed by us and resolved as soon as possible. The three matters were:

88.1. The ongoing dire financial predicament of SAA and, specifically, the role of the Chair of the Board, Ms Dudu Myeni (“Ms Myeni”);

88.2. The proposed nuclear procurement deal; and

88.3. Mr Tom Moyane’s role at the SARS as its Commissioner.

89. I then assisted with the drafting of a media statement that was issued by the Presidency later that evening, which announced my re-appointment to the position of Minister of Finance, and the appointment of Mr van Rooyen to the vacated post of Minister of COGTA (**see Annexure 18**).

90. The statement also sought to provide reassurances regarding fiscal discipline and prudence, financial sector stability and the ongoing prioritisation of strategies for economic growth and employment creation.

91. Given that I was already sworn in as a member of Cabinet, no further swearing-in formalities were required for me to take up the position of Minister of Finance for the second time.

Monday, 14 December and Tuesday, 15 December 2015

92. Upon my re-appointment, I urgently convened meetings on Monday, 14 December and Tuesday, 15 December 2015, with:

92.1. Deputy Minister of Finance, Mcebisi Jonas (“former Dep Min Jonas”) to discuss the urgent and significant tasks we faced;

92.2. The National Treasury team, so that I could be briefed on the preparations for the 2016 Budget of the Republic;

92.3. Mr Moyane at SARS, regarding 10 issues that I considered important to immediately address the situation at SARS (**see Annexure 19**); and

92.4. Mr Van Rooyen to facilitate the handover of the COGTA portfolio.

IV RELEVANT EVENTS IN MY SECOND TERM AS MINISTER OF FINANCE

South African Airways

93. The financial and governance challenges experienced by SAA in recent years are no doubt well known to the Commission. At the time that I was re-appointed Minister of Finance, an immediate priority was dealing with the proposed restructuring of a deal that had been approved by Mr Nene and Airbus in terms of which SAA could swap the purchase of ten A320 aircraft for a lease of five A330-300 aircraft from Airbus.

94. Then Chairperson of SAA, Ms Myeni, however, wished to amend the swap transaction to allow SAA to purchase the aircraft and enter into a sale and lease back deal with local businesses. The proposed pre-delivery payments (of approximately USD40 million or approximately R603 million at the time) under that proposal would likely have triggered debt defaults by SAA due to the pressure these payments would have placed on SAA's cash resources. Cross-defaults on other leasing arrangements and the probable triggering of government-guaranteed debt obligations would likely have followed. This would have had severe consequences for SAA and the country as a whole.

95. In late December 2015, while driving on the N2 highway in Cape Town, I received a telephone call from former President Zuma enquiring whether we could do what Ms Myeni wanted with respect to the Airbus deal. I explained that we could not, since the fiscus could not afford the pre-delivery payments and penalties that would

follow if we undertook her proposal. It was clear to me that Ms Myeni had contacted the former President and that that had prompted his call to me.

96. I afforded SAA the opportunity to make further representations to National Treasury regarding Ms Myeni's proposal, following which I decided, in late December 2015, that the swap transaction should go ahead as had been approved by Mr Nene in July 2015.

97. Prior to my reappointment as Minister of Finance, the National Treasury had been working on the process for appointing a new SAA Board (as outlined in Mr Nene's statement to the Commission). Progress was slow, and I understand that eventually the engagements between officials from the Presidency and from National Treasury produced a list of individuals to be appointed to the Board. A compromise was reached that Ms Myeni would only continue as Chairperson of the Board for a further year.

2016

98. During January and February 2016, I was part of South Africa's delegation to the annual World Economic Forum meetings held in Davos, Switzerland ("WEF Davos") and worked on the finalisation of the Budget, which was presented to Parliament on 24 February 2016.

99. I was approached by South African business leaders at the WEF Davos for urgent discussions on how to avoid a sovereign credit rating downgrade and how to inspire confidence in the South African economy and government, after the drastic and damaging changes at the Treasury. This resulted in an urgent meeting

convened with business leaders upon my return to South Africa from the WEF Davos. The CEO Initiative was formed out of these engagements.

100. This was followed by an investment roadshow by labour, government and business representatives, to overseas investors who are invested in our economy and in particular in South Africa's debt, during March 2016.

101. In addition, the CEO Initiative launched a fund of R1,5 billion for supporting small business, particularly black-owned small businesses, as well as the Youth Employment Service (as proposed and championed by then Deputy President Ramaphosa), which will ensure that big business provide work and entrepreneurial opportunities to a million young people over a three-year period. Further possibilities for additional investment in the South African economy were explored during these various initiatives.

27 Questions

102. Shortly before my budget speech in Parliament, Major General Mthandazo Berning Ntlemeza ("Gen Ntlemeza"), head of the Directorate for Priority Crime Investigation, known as the "Hawks", requested and attended a brief meeting at the Treasury. Gen Ntlemeza advised me then that two investigations were ongoing: into SAA and SARS. No details as to the substance, scope or progress of either investigation was shared with me by Gen Ntlemeza in this short conversation.

103. I believe that the capture of the Hawks under Gen Ntlemeza was central to the state capture project. This capture enabled the Hawks to be abused for political

objectives through malicious law enforcement action and without regard for the impact that abuse of power would have on the integrity of the country, the economy or personally on the individuals, such as myself, who were targeted in this orchestrated campaign.

104. On or about 19 February 2016, in the week before my Budget speech, an envelope was hand-delivered to the Treasury at Gen Ntsemeza's insistence. This envelope contained 27 questions addressed to me from the Hawks, and demanding that they be answered by 2 March 2016. The questions related to the High Risk Investigations Unit within SARS, formed years earlier. Charges against me relating to that unit had been filed by Moyane on 15 May 2015 (SAPS Brooklyn Case No. 427/05/15).

105. I arranged to visit the then President later that day to present the correspondence and questions from the Hawks to him and to ask him whether he was aware of, and agreed with, this law enforcement action against me.

106. During that meeting, I objected strongly about this persecution and asked former President Zuma whether political activists like myself must now prepare to be eliminated during the democratic era even though we had survived the oppression of the Security Police in the apartheid era.

107. In response to my objection, he merely flipped through the pages of the letter. He said he would discuss the matter with the then Minister of Police, Mr Nkosinathi Nhleko ("Mr Nhleko").

108. I received no information from the former President in this regard subsequent to this meeting.

109. However, on Monday 22 February 2016, I was requested to attend a meeting with the Secretary General (Mr Gwede Mantashe) (“Mr Mantashe”), Deputy Secretary General (Ms Jessie Duarte) (“Ms Duarte”) and Treasurer General (Mr Zweli Mkhize) of the ANC. I interrupted preparation for the Budget and flew to Johannesburg from Cape Town to meet them that afternoon. The 27 questions and this abuse of law enforcement powers for political objectives was discussed with them. I was assured that a political solution will be found to this political problem.
110. The 27 questions were leaked to the media the day after the Budget (**see Annexure 20**).
111. State Security Minister, Mr David Mahlobo, and Min Nhleko held a joint press conference on 2 March 2016, defending the investigation and the timing of the questions posed to me by the Hawks (**see Annexure 21**).
112. Following an extension on the deadline, I answered all 27 questions on legal advice and provided my responses to the Hawks (**see Annexure 22**).
113. This set of events, combined with what is set out below, was the beginning of what appeared to be a campaign to force me to resign as Minister of Finance and continue the efforts to capture the National Treasury thereafter. I believe that my re-appointment had thwarted these efforts and I believe Mr Nene was removed from the national executive for the same reason – to obtain full control of the Treasury.
114. In this regard,

114.1. I refer the Commission to the contents of subsequent media reports that revealed that shareholders in Gupta-linked consultancy group Trillian, allegedly were warned in advance that Mr Nene would be fired as Finance Minister, and that Trillian planned to exploit access to the Treasury under Mr Nene's replacement, Mr van Rooyen. Mr Eric Wood, Trillian's Chief Executive Officer at the time ("Wood"), denied the allegations, and suggestions that he, Trillian and other Gupta-connected individuals had profited from the market turmoil that followed Mr Nene's removal. Evidence provided by a Trillian whistleblower to the parliamentary inquiry into Eskom, established that Wood may have profited thanks to his prior knowledge of the removal of Mr Nene **(see Annexure 23)**.

114.2. Upon returning to the Treasury, I learnt of a related controversy regarding the appointment of two individuals who accompanied Mr van Rooyen to the Finance Ministry following his appointment, namely Messrs Ian Whitley ("Whitley") (appointed as chief of staff) and Mohamad Bobat ("Bobat") (appointed as a special advisor) **(see Annexure 24)**.

114.3. Messrs Whitley and Bobat also were reported to have been present with Mr van Rooyen at the Gupta family compound located in Saxonwold, in the days immediately preceding his appointment as Minister of Finance. A third individual, Malcolm Mabaso ("Mabaso") (said to be associated with the Guptas through former Minister of Mineral Resources, Mr Zwane) was also present with Mr Van Rooyen at Treasury, though his precise role was unclear.

114.4. Media reports also revealed that Whitley and Bobat shared a confidential Treasury document containing a Nine-Point Plan for South Africa's economic

recovery, growth and development, with Gupta associates and executives, including Messrs Essa, Wood and Mabaso, on or about 12 December 2015, prior to Mr Van Rooyen's removal. The email forwarding the Treasury document stated, "Gents, finally..." (**see Annexure 25**)

114.5. All of these reports may be relevant to explaining the removal of Mr Nene.

New Age Budget Breakfast Cancellation

115. Another decision which I believe may have contributed to my eventual removal as Minister of Finance in March 2017, was revealed on 21 February 2016, three days before the Budget was presented to Parliament, when the *Sunday Times* newspaper reported that the National Treasury had cancelled the Gupta-owned *The New Age* newspaper's sponsorship of, and participation in, the post-Budget breakfast briefing. This event was set to take place the morning following delivery of the Budget speech in Parliament (i.e. 25 February 2016). Ultimately, the broadcast rights for the breakfast briefing were allocated to two other media institutions, namely the SABC and ENCA, in an effort to rotate the opportunity to carry the broadcast.

Offer To Jonas

116. At around this time, on 16 March 2016, former Dep Min Jonas issued a statement confirming media reports that, in October 2015, he had been offered the

position of Minister of Finance to replace Mr Nene, prior to Mr Nene's removal in December 2015. Former Dep Min Jonas stated that the offer was made at a meeting at the Gupta family's Saxonwold compound by a member of the Gupta family, accompanied by Mr Duduzane Zuma, former President Zuma's son, and Mr Fana Hlongwane.

117. In this regard,

117.1. Mr Jonas contacted me on Friday, 23 October 2015, wishing to see me upon his return from the Eastern Cape that weekend. He seemed upset by something but did not discuss any details regarding why he wanted to see me.

117.2. I was visited by Mr Jonas on or about Sunday, 25 October 2015, at my Pretoria home. Mr Jonas appeared extremely distraught, upset and emotional. He seemed unable, or hesitant, to disclose specific detail about what had caused this (perhaps due to the presence of my wife), and said he found the situation intolerable and that he wanted to resign.

117.3. I tried to calm him down and to prevent him from making any drastic decisions given his state of mind. I dissuaded him from resigning, advising him that it would not be in the best interests of the country for him to leave his position.

117.4. I understood that he also was planning to discuss his situation with Mr Nene.

117.5. Following my re-appointment as Minister of Finance, I became aware of more details of the offer made to former Dep Min Jonas at the Gupta compound, as were later confirmed by him in his media statement, and

elaborated on further in his statement and evidence already provided to the Commission.

My interactions with Gupta family members

118. For the record, I have been asked by the Commission's legal team whether I ever met members of the Gupta family.

119. I have never been to the Gupta family compound located in Saxonwold.

120. I was invited to the infamous Gupta family wedding at Sun City, but declined the invitation.

121. I can recall the following further instances where I was in the same place as them.

121.1. I attended a cricket test match also in the 2009 to 2014 period (I cannot recall which year) and one of the Gupta brothers (I cannot recall which one) was present in the Presidential box. We greeted but did not speak to each other.

121.2. Ministers accompanied the former President to various functions, including breakfast briefings following the State of the Nation address. I recall that one or more of the Gupta brothers would be present at such events. I would see them, but not interact with them.

122. I can recall one meeting where the former President introduced me to Mr Ajay Gupta.

122.1. Early on in my first term as Minister of Finance, though I cannot recall precisely when, I went to the Presidential guest-house in Pretoria, Mahlamba Ndlopfu, for a meeting with former President Zuma. When I was called into the meeting room, former President Zuma introduced me to a man who I believe is Mr Ajay Gupta. Mr Zuma introduced him as “my friend” and told me that the man had expertise in regard to small business and finance. I recall us exchanging generalities for a couple of minutes, but I do not recall the details of what was a very cursory exchange. Mr Gupta then excused himself and left me and the former President to continue our meeting.

123. I had forgotten of another instance where one of the Gupta brothers may have been present at a meeting I had with billionaire Indian businessman Anil Ambani of the Reliance group of companies in or about June 2010. I stress that I do not recall the details set out below since it proved to be a meeting of little significance at the time, but have been assisted in this regard by my former Chief of Staff, Mr Dondo Mogajane.

123.1. I am told that the Presidency put Mr Rajesh “Tony” Gupta in touch with Mr Mogajane. Mr Gupta called Mr Mogajane repeatedly, asking for a meeting with me. However, he never advised Mr Mogajane who would be at such a meeting or what the agenda for the meeting was to be. We were even asked to attend the meeting at the Gupta family compound in Saxonwold. I refused to schedule a meeting with the Gupta family, whether at their residence or anywhere else.

123.2. Eventually, Mr Gupta told Mr Mogajane that one of the Ambani brothers, from the Reliance group of companies in India, wished to meet me and that it

was concerning a possible MTN transaction. Bharti Airtel had called off merger talks with MTN in 2008 and again in 2009, and Reliance Communications was reported also to have been interested in pursuing the acquisition of MTN during 2009. We were advised that Mr Ambani was in South Africa for the 2010 Soccer World Cup and that he would like to meet me regarding the possible MTN transaction (**see Annexure 26**).

123.3. I agreed to a meeting with Mr Ambani, who had the potential to be a significant investor in South Africa.

123.4. The meeting was held at a hotel in Pretoria, Villa Sterne, on a Sunday morning.

123.5. I attended the meeting, together with Mr Mogajane, who advises me that:

123.5.1. The meeting lasted less than an hour;

123.5.2. Discussions in the meeting were between Mr Ambani and I;

123.5.3. It commenced with general conversation about the World Cup, the Ambani family's visits to the Kruger National Park, and Indian and global politics;

123.5.4. Eventually, Mr Ambani asked about the legal and regulatory processes that would be required to obtain approval for a transaction such as the purchase of MTN and we spoke in general terms of what processes would need to be followed, and the role of the National Treasury; and

123.5.5. The meeting ended inconclusively and we parted ways and left.

123.6. Mr Mogajane has advised me that he recollects that Mr Ajay Gupta was present at the meeting. I do not recall him being present.

123.7. I wish to refer the Commission to **Annexure 27**, which is my response to a Parliamentary question from the Democratic Alliance. It is apparent in my written response that I do not make mention of the 2010 meeting with Mr Ambani of the Reliance Group, which a Gupta brother may or may not have attended. This is simply because, at the time of submitting the written response, I had no recollection of the 2010 meeting with Mr Ambani.

Public attacks and Presidential inaction

124. Returning to the events of 2016, it was a year marked by ongoing harassment and attempted distraction of me by law enforcement agencies, some media houses and a persistent social media campaign of fake news and personal attacks that appeared antagonistic towards me and the work being done by Treasury. I was the target of an orchestrated campaign that appeared aimed at forcing me to resign as Minister of Finance. The role of the public relations agency Bell Pottinger was central to this orchestrated campaign and I am sure it is well known to the Commission.

125. This orchestrated campaign against me and National Treasury caused immense stress for myself, former Dep Min Jonas, senior officials and our families. In response, we were repeatedly advised by our comrades that we should not resign but that we should continue to serve the national interest and to “hang in there.” Comrades would tell us that, ultimately, all one had was one’s integrity and

that it was worth fighting for. The sentiment seemed to be that we should not “make it easy for them” to get rid of those of us who were seen as obstacles to the state capture project and the looting of our public resources.

126. It was a difficult and challenging period. Throughout, I tried to focus on the national interest and what was best for our country, and to do my work and fulfil my constitutional obligations with that as the guiding principle.

127. First to occur was the blatant refusal by Mr Moyane to account to me as Minister of Finance on material issues (such as the operating model of SARS). He even refused to acknowledge my authority on what may appear to be petty matters such as his applications for personal leave would not be submitted to the Ministry (although during Mr Nene’s time as Minister they were). He would claim that he obtained permission for leave from the Presidency, which officials there would deny.

127.1. Mr Moyane made serious allegations against me and continued to refuse to accept that as Minister of Finance, he is accountable and answerable to me for the performance of SARS. However, the former President did nothing to intervene in this deteriorating relationship, to facilitate adjudication of the dispute, or to resolve it in any other less formal way. It festered for many months, with Mr Moyane writing further letters about me to the President.

127.2. I faced further ongoing personal and institutional attacks, antagonism and an evident lack of accountability from Mr Moyane, the Commissioner of SARS. Indeed, the Commission is respectfully referred to the affidavit filed in the ongoing disciplinary proceedings against Mr Moyane for further detail regarding the deterioration of my relationship with him (**see Annexure 28**).

127.3. declaration of an inter-governmental dispute in terms of section 41 of the Inter-governmental Relations Framework Act, 13 of 2005, by Mr Moyane at SARS against me as Minister of Finance on or about 14 April 2016 (**see Annexure 29**).

127.4. Michael Hulley attempted to mediate the dispute on behalf of former President Zuma. However, he (Mr Zuma) appeared reluctant to personally intervene and end the hostility and lack of accountability from Mr Moyane evident in our relationship.

128. Second, in or about 12 June 2016, then Minister of Social Development, Bathabile Dlamini (“Min Dlamini”), wrote a lengthy letter to Mr Zuma seeking his intervention with regard to National Treasury’s scrutiny of, and objections raised regarding the various systems for the payment of social grants and the implementation of policy by the Social Development Department (**see Annexure 30 - CONFIDENTIAL**).

129. In addition, the important work that National Treasury was doing to amend the Financial Intelligence Centre Act caused acrimonious and personally insulting attacks on me and the officials of the Department from those opposed to the amendments.

129.1. These amendments related to the improvement and strengthening of various aspects of South Africa’s financial intelligence capabilities. The Financial Intelligence Centre (“FIC”) receives information from the banking sector, which it analyses and shares with domestic and international law enforcement agencies to identify the proceeds of crime, combat money laundering, terrorism funding and tax evasion, among other crimes. South

Africa is a member of the Financial Action Task Force, which is an intergovernmental organisation that develops standards for all countries to combat these illegal activities and facilitates international cooperation in these efforts. In order to enhance the integrity of the financial system and to comply with developing international standards its best practices, South Africa needed to amend its legislation regarding the FIC Act and the powers and functions of the FIC.

129.2. Most controversially, the amendments introduced additional scrutiny of the personal finances and transactions of so-called Politically Exposed Persons (“PEPs”) (which in the Act are termed Prominent Influential Persons (“PIPs”) (and their families and associates), as well as a requirement to record the Beneficial Owners (the natural persons) of bank accounts.

129.3. This amendment process saw a concerted effort by other members of the executive in the Security Cluster to undermine National Treasury’s oversight of the FIC. There appeared to be an effort to move the FIC, and presumably access to its highly sensitive personal information, to the Security Cluster (**see Annexure 31**). This was concerning since the FIC plays such an important role in the fiscal and banking regulatory environment overseen by National Treasury.

129.4. Former President Zuma also delayed signing the amendments into law until litigation was commenced to force him to do so. No meaningful engagement occurred between the Presidency and National Treasury regarding any reservations that the former President may have had regarding the Bill. Media reports noted that he was lobbied to not sign it into law by critics

and those that seemed opposed to National Treasury at the time (**see Annexure 32**). Eventually it was referred back to Parliament by the President in November 2016.

129.5. Media outlets owned by the Gupta family (ANN7 in particular) launched several determined attacks on the amendments. Commentators such as Mr Mzwanele Manyi and Mr Tshepo Kgadima of the Progressive Professionals Forum and Ms Danisa Baloyi of the Black Business Council were vocal critics of the amendments, and the provisions relating to PEPs in particular.

129.6. At the Parliamentary hearings held in January 2017, these same critics objected to the Bill. My Cabinet colleagues in the Security Cluster also met with officials from National Treasury to raise their objections to the amendments as well.

129.7. The Amendment Bill was eventually passed in May 2017 under my successor.

130. In sum, the orchestrated campaign against me and other leaders of National Treasury raged within the Cabinet, the institutions of state and on certain media and social media platforms. It shifted to yet another front later in the year, when I became the target of malicious and seemingly politically-motivated criminal charges.

Charges

131. On 11 October 2016, the former National Director of Public Prosecutions, Adv Shaun Abrahams (“Adv Abrahams”), announced that charges were to be brought

against me, as well as former SARS Commissioner, Mr. Oupa Magashula and former deputy SARS Commissioner, Mr. Ivan Pillay. The charges alleged fraud, relating to Pillay's early retirement, which had been approved by myself and Magashula in 2010 (**see Annexure 33**).

132. Subsequent media reports revealed that Adv Abrahams had met President Jacob Zuma, Mr Mahlobo, Justice Minister Michael Masutha and Social Development Minister Bathabile Dlamini at Luthuli House the day before his announcement, 10 October 2016. Adv Abrahams explained the meeting as being held to discuss student protests with ANC leaders, but it is unusual that the ministers of higher education, finance and police were not present if that was the subject of the discussion (**see Annexure 34**).

133. Markets reacted to the announcement of Adv Abrahams as follows:

133.1. The Rand weakened by 3.9% against the US Dollar;

133.2. Yields on South African government bonds due rose to their highest level since 2 September 2016 ;

133.3. The cost of insuring against non-payment of debt for five years using credit-default swaps, rose to the highest since July 2016; and

133.4. Bank stocks fell, wiping off almost R34 billion in value on the FTSE/JSE Africa Banks Index.

134. On 26 October 2016, in the midst of facing these charges, I delivered the Medium Term Budget Policy Statement (MTBPS) in Parliament.

135. In an about-turn days later, Adv Abrahams announced the withdrawal of all of the charges on 31 October 2016, stating that he was then satisfied that the three accused did not have the intention to act unlawfully (**see Annexure 35**). This was a few days before my first scheduled court appearance. Various civil society organisations had mobilised in protest against the charges and in support of me and my fellow accused.

136. Both announcements were made amid allegations in the public domain that political motives were at play in the decisions to question and charge me and my fellow accused, in what appeared to be yet another attempt to force me to resign, to create uncertainty and instability and ultimately, to enable the capture of the Treasury.

137. Following the withdrawal of the criminal charges, I then turned to preparation of the 2017 Budget, which I delivered to Parliament on 22 February 2017.

The closure of the Gupta bank accounts

138. In or about April 2016, Oakbay Investments (Pty) Ltd (“Oakbay”), controlled at that time by the Gupta family, announced that its bank accounts had been closed (**see Annexure 36**).

138.1. At around the same time, Mr Nazeem Howa, the Chief Executive Officer of Oakbay, began to correspond with me seeking my intervention to reverse these account closures. I obtained legal advice that confirmed that it would be unlawful and improper for me to intervene in the private contractual relationship

between a bank and its client. I conveyed this advice to Mr Howa, but he appeared undeterred and continued to request a meeting with me.

138.2. Together with officials from National Treasury, I held a meeting with representatives of Oakbay (including Mr Howa and Ms Ronica Ragavan) on or about 24 May 2016 in which we explained the highly-regulated environment in which banks operate and the requirements that they closely monitor and report on suspicious transactions in order to combat money laundering. We also explained the legal impediments to me, or anyone else, intervening in the private contractual relationship between a bank and its clients. I urged him to approach the courts for relief. I knew his father as a highly principled person and asked him directly if he believed his father would be proud of his behaviour.

139. Following a Cabinet meeting on 13 April 2016, at which I was not present, a Ministerial task team (which should not be confused with an Inter-Ministerial Committee (“IMC”)), was established to look into the issue of the closure of the Gupta bank account. Mr Zwane, Labour Minister Mildred Oliphant and myself were nominated for this task.

140. Following correspondence received from Mr Zwane purporting to schedule a meeting of the task team (seemingly expanded to include the then Minister of Communications, Faith Muthambi) with the banking institutions, I questioned the purpose and seeming aim of the task team with my colleagues who were nominated to it. I explained the extensive global and domestic legal and regulatory framework that governs the financial sector, and cautioned that this framework needed to be understood and considered prior to any engagements with the

banking institutions. My concerns were not addressed by the members of the task team (**see Annexure 37**).

141. I chose not to attend the meetings of the task team nor to participate in its actions, because I was of the view, confirmed in legal advice, that members of the executive cannot interfere in the contractual relationships between banks and their customers.

142. I do recall further events in Cabinet that I cannot publicly disclose but which I have indicated to the Commission should be investigated, that indicated to me that Mr Zwane had the full backing and support of former President Zuma in pursuing the task team's objective of undermining and maligning the stance adopted by myself and National Treasury to the closure of the bank accounts, this included three reports from the task team, two of which were distributed in Cabinet.

143. On or about 1 September 2016, Mr Zwane issued a media statement, purportedly on behalf of the task team and, I believe, based on its first report, announcing that it, through Cabinet, would recommend to former President Zuma that a judicial inquiry be established into the closure of the bank accounts of several Gupta companies by the major commercial banks in South Africa. This statement was effectively abandoned in the days that followed, with a statement issued by the Presidency, to clarify that no such decision had been endorsed as a decision by Cabinet (**see Annexure 38**).

144. On or around 14 October 2016, I launched a court application to seek declaratory relief regarding the limitations of my available powers to intervene in various decisions taken by several commercial banks to close the accounts held by Gupta-related firms (**see Annexure 39**).

144.1. This application attracted further hostility towards me from supporters of the former President and the Guptas.

144.2. Attached to the application as an annexure was a certificate issued by the Financial Intelligence Centre certifying that it had received 72 Suspicious Transaction Reports from the various banks relating to suspicious account activity and transactions conducted using the bank accounts that had been closed. This was the first public acknowledgement of suspicions regarding the business affairs of the Gupta entities since the Public Protector's State of Capture report was only released to the public on 2 November 2016 (following litigation aimed at interdicting its release launched by former President Zuma, Mr Zwane and Mr van Rooyen.

145. I submit to the Commission that it should "follow the money" and request a full account of all transactions by any Gupta-related company and related individuals that has gone through bank accounts. By doing so it will be better placed to determine which activities were related to criminality and malfeasance. This will assist State Owned Enterprises and taxpayers to recover funds lost in this process.

"The Nuclear deal" (Part II)

146. Following Cabinet's decision on 9 December 2015 that the Department of Energy ("DoE") issue the Request for Proposal ("RFP") for the nuclear programme, the engagements between National Treasury and the DoE during 2016 largely centred on the procurement process to be followed.

147. The Office of the Chief Procurement Officer (“OCPO”) sought two legal opinions. Initially the DoE intended to undertake a closed government-to-government procurement, but this would have violated the Constitution, which requires that state institutions procure goods or services using a system that is fair, equitable, transparent, competitive, and cost-effective. Having reached agreement that a competitive process must be followed, the DoE continued to insist that the “pre-engagement” activities they had already undertaken (relating to the signing of the cooperation agreements) served to prequalify those bidders. There were several other unresolved issues, including aspects that would have required exemption from the Preferential Procurement Policy Framework Act. Moreover, the RFP documentation that had been prepared had many flaws and gaps, identified not only by the National Treasury officials, but also in reports produced by the advisors working on behalf of the DoE.

148. In June 2014, Eskom had written to the DoE indicating that the Board had decided not to provide funding for any new build projects beyond Medupi, Kusile and Ingula power stations due to the funding constraints Eskom was facing. As a consequence, the DoE had sought Cabinet approval for the South African Nuclear Energy Corporation SOC (“NECSA”) to replace Eskom as the implementing agent, i.e. the institution that would own and operate the nuclear power plants, with the DoE serving as the procuring agency.

149. Despite the fact that Eskom was experiencing severe financing challenges, warranting that government decide to appropriate R23 billion of funding to the company during the 2015/16 financial year, in September 2016, Eskom, through its then chief executive officer, Mr Brian Molefe, indicated its willingness and

commitment to participate in the nuclear build programme (**see Annexure 40**). The Commission will be familiar with the centrality of Eskom's capture to the state capture project. In November 2016, Cabinet approved that Eskom assume responsibility for procuring, owning and operating the nuclear power stations. In December 2016, Eskom issued a watered-down and non-binding general request for information ("RFI") instead of the originally intended RFP.

150. Around the same time, the non-governmental organisations Earthlife Africa and the Southern African Faith Communities' Environment Institute launched legal proceedings against the Minister of Energy, the President and Eskom (among others) challenging the determinations in terms of Section 34 of the Electricity Regulation Act that had been made by the Minister of Energy in 2013 and 2016, and the constitutionality of the tabling by the Minister before Parliament of three intergovernmental agreements during 2015. This stalled progress on the nuclear programme.

151. Shortly after my replacement as Minister of Finance, the Cape High Court ruled that the nuclear cooperation agreements with the USA, Russia and South Korea were unconstitutional and unlawful, and that the ministerial determination for a 9.6 GW nuclear new-build in South Africa was invalid (**see Annexure 41**).

Maseko and DGs response

152. I have been asked by the Commission's legal team to respond to the evidence of Mr Themba Maseko regarding a memorandum calling for a commission of inquiry into state capture that a group of former Directors-General addressed to

the President, Deputy President, other Cabinet members and myself. One of the signatories to that memorandum, Mr Dipak Patel, provided me with a copy of the document. We had a brief conversation about it, during which I encouraged the group to “do their bit” to resist state capture and ensure accountability for those implicated in it. At this time, civil society also was active regarding state capture and corruption. The former Directors-General’s concerns regarding the circumventing and undermining of procurement processes, professionalism and integrity within the public service were all concerns that I shared. I understand that the group demobilized following the failure of the ANC’s own initiative to deal with state capture that came about at around the same time. I understand that only Mr Maseko lodged a submission with the ANC following its call for information. Nothing further came of the initiative, as far as I am aware.

V MY REMOVAL AS MINISTER OF FINANCE

153. As is customary, I planned and led an investor roadshow to London and the USA in late March 2017, following the Budget. As also is the usual practice, the Presidency approved the roadshow and the participation of myself, former Dep Min Jonas and the Director-General of the Treasury, Mr Fuzile. This approval involves the preparation of a memorandum setting out our proposed itinerary, details of the meetings to be held on the roadshow and details of the South African business people accompanying us on the roadshow.

154. According to that itinerary, Mr Fuzile and I traveled to London overnight on Sunday, 26 March 2017. Former Dep Min Jonas was due to fly to New York overnight on Tuesday, 28 March 2017 and Mr Fuzile was to travel from London to New York to join him. I would then return to South Africa overnight on that Tuesday.

155. Once the airplane touched down at Heathrow Airport on the morning of Monday, 27 March 2017, I turned on my mobile phone and received an SMS from Dr Cassius Lubisi, the Director-General in the Presidency. The message requested that I, former Dep Min Jonas (who had not left South Africa yet) and Mr Fuzile return to South Africa immediately.

156. Mr Fuzile and I discussed the message, and decided to proceed with the meetings scheduled for that day, including with two of the global ratings agencies and to schedule a teleconference call for Monday afternoon with the ratings agency with which we were scheduled to meet on Tuesday. We made this decision so as to provide these important players with the same information on the same day. This was the most cost-effective option to return to South Africa. My office

investigated purchasing a one-way ticket to fly home during the day on Monday, 27 March 2017, but I considered it too costly.

157. Also on Monday 27 March 2017, former President Zuma reportedly informed senior leaders of the South African Communist Party (“SACP”) that he intended to remove me and former Dep Min Jonas, and referenced a purported “intelligence report” accusing me and others of conspiring with foreign forces against him as President. Of course, I reject and deny these allegations. I never saw this “intelligence report”.

158. Following a day of meetings that formed part of the planned investor roadshow, I flew back to South Africa that evening, arriving back on Tuesday morning, 28 March 2017.

159. Tuesday, 28 March 2017 was the day that the court application regarding the closure of the Gupta businesses’ bank accounts in South Africa by several of the major banking institutions was set to commence argument in the Pretoria High Court. It is of course possible that had I been removed as Minister of Finance by that time my successor would have withdrawn the application.

160. It was also the day that revered anti-apartheid activist, Mr. Ahmed Kathrada, passed away.

161. Immediately after landing at O R Tambo, on Tuesday 28 March 2017, Mr Fuzile and I met with the former Secretary-General of the ANC, Mr Mantashe, at Luthuli House to obtain clarity about our positions. None was forthcoming. Mr Mantashe had contacted me while I was still in London and we had agreed to meet upon my return to South Africa.

- 161.1. During that meeting with Mr Mantashe, he informed me that former President Zuma had met with the ANC's Top 6 officials on the previous day, Monday, 27 March 2017. The same fake "intelligence report" had been presented to them, but it had been rejected by those in the meeting.
- 161.2. Mr Mantashe then told me that Mr Zuma told them that, regardless of the "intelligence report", his relationship with me had irretrievably broken down. Since this was not my impression of my relationship with former President Zuma, I asked Mr Mantashe if he had indicated why he felt that our relationship had irretrievably broken down. Mr Mantashe indicated that he did not.
- 161.3. Mr Mantashe recounted that Mr Zuma had indicated that it was unusual that the Minister, Deputy Minister and Director-General were all out of the country at the same time. I corrected him, saying that former Dep Min Jonas had not yet left South Africa. Mr Mantashe seemed shocked by this fact.
- 161.4. I believe that Mr Zuma had mentioned Brian Molefe as a possible replacement as Minister of Finance, but that this suggestion was rejected by the members of the Top 6 in the meeting.
- 161.5. As an aside, I note that, on 23 February 2017, Mr Brian Molefe, who had resigned as the Eskom CEO in November 2016, following the Public Protector's *State of Capture* report, was sworn in as a Member of Parliament for the ANC. Speculation at the time was that this was a precursor to his appointment as my replacement as Minister of Finance. Almost a year earlier, in April 2016, Mr Sifiso Buthelezi also, was sworn in as a Member of Parliament for the ANC. Speculation suggested that he was earmarked to be Mr Molefe's Deputy Minister.

- 161.6. Mr Mantashe indicated to me that Mr Zuma would prefer it if I would resign, rather than him having to fire me. He spoke to me about leaving with my integrity or honour intact. As explained above, I had no plans to resign but would continue to serve the national interest. My position was that the former President could fire me if he wanted to get rid of me.
- 161.7. I understood from Mr Mantashe that I was likely to be removed, but that the issue of my replacement was to be discussed again by Mr Zuma at the next Top 6 meeting the following week (Monday, 3 April 2017). Mr Fuzile was distraught at the turn of events and was himself considering resigning.
- 161.8. I returned to my office at National Treasury that afternoon.
162. The next day, Wednesday, 29 March 2017, a funeral was held for Ahmed Kathrada at West Park Cemetery in Johannesburg.
163. On Thursday, 30 March 2017, the SACP issued a media statement recording that it had been informed on Monday, 27 March 2017 by Mr Zuma that I was to be replaced as Minister of Finance (**see Annexure 42**). The statement recorded that the SACP objected to this intended reshuffle. It also noted that it had laid a complaint with the Inspector General of Intelligence and the Minister of State Security regarding “a rogue intelligence unit that in our view gathers data illegally, produces false reports and feeds them into the political and public domain to smear comrades.” I do not know the status of that complaint.
164. That evening, former President Zuma announced that both myself and former Dep Min Jonas, and several others including Ministers Hanekom and Ramathlodi, were removed from our positions (**see Annexure 43**). We were replaced by

Messrs Malusi Gigaba and Buthelezi, respectively. I became aware of my removal when the President made his announcement of the reshuffle, which was broadcast on television while I watched.

165. I had no contact with the former President regarding his decision to remove me as Minister of Finance.

166. The global ratings agencies expressed their immediate concern at these developments. For example,

166.1. On Monday, 3 April 2017, Moody's Investors Services announced that it had placed the Baa2 long-term issuer and senior unsecured bond ratings of the government of South Africa on review for downgrade. That review was said to be prompted by "the abrupt change in leadership of key government institutions" and would "allow Moody's to assess these risks and if the changes in leadership signal a weakening in the country's institutional, economic and fiscal strength."

166.2. The same day, Standard & Poor's, downgraded South Africa's ratings to 'BB+' from 'BBB-' and the long-term local currency rating to 'BBB-' from 'BBB' in a reflection of their "view that the divisions in the ANC-led government that have led to changes in the executive leadership, including the finance minister, have put policy continuity at risk. This has increased the likelihood that economic growth and fiscal outcomes could suffer."

166.3. On 7 April 2017, Fitch Ratings also downgraded South Africa's Long-Term Foreign- and Local-Currency Issuer Default Ratings to 'BB+' from 'BBB'. These downgrades were made in light of its view that "the cabinet

reshuffle, which involved the replacement of the finance minister, Pravin Gordhan, and the deputy finance minister, Mcebisi Jonas, is likely to result in a change in the direction of economic policy. The reshuffle partly reflected efforts by the out-going finance minister to improve the governance of state-owned enterprises (SOEs). The reshuffle is likely to undermine, if not reverse, progress in SOE governance, raising the risk that SOE debt could migrate onto the government's balance sheet. Differences over the country's expensive nuclear programme preceded the dismissal of a previous finance minister, Nhlanhla Nene, in December 2015 and in Fitch's view may have also contributed to the decision for the recent reshuffle.”

VI RETURN TO PARLIAMENT

167. Following my removal as Minister of Finance, I remained an ANC Member of Parliament. I was a member of the Portfolio Committee on Public Enterprises that held an inquiry into state capture at various SOCs, including Eskom, Transnet, PRASA and Denel. The disclosures and submissions made to the Committee will doubtlessly be relevant to this Commission's other terms of reference. I do not provide that detail in this statement.

168. My experience in the Portfolio Committee's inquiry into Eskom, in particular, revealed the extent of manipulation of the Boards of SOCs, their management, and the abuse of the contracts and procurement processes for corrupt and unlawful ends. This pillage was replicated and became prevalent in other SOCs as well. I believe that this hollowing out of the governance structures of SOCs was a direct consequence of the state capture project and was aimed at facilitating their plunder. One can observe how the methodology was perfected at one SOC and then replicated at others as the state capture project was rolled out.

VII RETURN TO CABINET

169. Following Mr Zuma's resignation on 14 February 2018, President Ramaphosa announced a cabinet reshuffle on 26 February 2018. I was appointed Minister of Public Enterprises.

170. In my current position, the investigation of the damage done in the past decade to South Africa's SOCs is ongoing. So too are efforts to restore good corporate governance, procurement framework compliance and accountability for implicated members of the Boards and management of SOCs. The details of the state of our SOCs and these "re-capturing" efforts also are relevant to this Commission's other terms of reference. The Department of Public Enterprises will be providing the Commission with information in this regard.

VIII CONCLUSION

171. The Commission's legal team has requested that I reflect on possible lessons and recommendations arising from my evidence relating to its Terms of Reference 1.1 to 1.3.

172. I believe that South Africa requires what I call a "whole of society transformation." By this I mean we need deep reflection on our chosen and shared values and priorities. On issues of integrity and corruption, South African business, and professionals or advisors in particular, need to reflect on their role in state capture. The Commission's investigation of these issues should lead to a genuine and deep transformation of business ethics and culture in our country.

173. I believe that meaningful reflection and transformation also is required in respect of the need for greater transparency and effective oversight with regard to major public procurement processes. New checks and balances on executive power – at all levels and in all spheres of government, not just the national executive or the Presidency – are required.

174. I believe that these lessons will promote unity and the national interest, and enhance development and inclusive growth.

175. The work currently being done with SOEs shows that they are and were seriously compromised in terms of the scale of financial losses, the undermining of good corporate governance, their operational capability, and the dearth of competent and courageous leadership in the face of serious fiscal risk.

176. The Commission should consider releasing interim reports or measures that could expose and help put a stop to ongoing malfeasance.

177. “Consequences management” is required: criminal charges should be pursued by our restored law enforcement agencies, individuals should have their services terminated, demoted, declared to be delinquent directors or ordered to pay back the money pillaged and looted from our state.
178. It must be recognised that those constituencies who would have liked the status quo to remain are engaged in a determined and vigorous fight back taking place across our state.
179. The real cost of state capture is the damage it has done to the institutional fabric of our state. Good people lost their jobs, families were put through trauma and vilification for standing up, and the lasting impact of the past decade weakened and hollowed out our state. A culture of malfeasance was legitimised and tolerated with increasing impunity and a lack of accountability. SOCs were distracted from their intended purpose of providing services, supporting economic development and creating inclusive growth in service of transformation.
180. People, including myself, who are appearing before the Commission continue to be subjected to harassment and racist abuse in frivolous and vexatious litigation, in the media and on social media. Decisions taken to clean up are stalled when they are challenged, whether internally or through litigation.
181. The misuse and abuse of public powers for suspicious objectives, including intimidation and harassment, also continues.
- 181.1. For example, recently on 1 October 2018, I was subpoenaed to appear before the Public Protector in regard to an investigation she is undertaking into the approval of an early retirement package offered to Mr Ivan Pillay. This was

the same issue regarding which I was charged criminally in 2016. The complaint was lodged on 18 November 2016 by Mr Lebogang Hoveka, who was then a speechwriter in the Presidency.

182. I believe that the fight back is aimed at countering the work done this year by public servants and political office bearers to “re-capture” the state and deliver on its constitutional mandate.

183. As I hope is clear from my statement, there were many who have resisted state capture at every opportunity, including activists, civil society, political leaders, journalists, businesspeople, labour, and lawyers. Our insistence on following the constitutional mandate given to the executive, and to follow the legal and regulatory frameworks over which we were responsible ensured that we could resist and oppose improper and unlawful schemes. Following the law and our consciences has been, and will continue to be, our chosen path. The cost of being honest is high for me personally, as well as for my family and my colleagues. It is a price paid to ensure that South Africa transforms from its apartheid past and its recently captured state into the nation for all South Africans promised in the Constitution.

PJ GORDHAN

____ October 2018